

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

60511

FILE: B-176994

DATE: FEB 12 1976 98614

MATTER OF: Chicago (Illinois) Association for Retarded Children;  
Reimbursement under Special Food Service Program for  
children.

DIGEST:

Regulation stating that reimbursement for free meals provided to needy children under section 13 of the National School Lunch Act, as amended, 42 U.S.C. 1761, may extend only through calendar month preceding month in which program agreement is executed was issued pursuant to statute and may not be waived so as to permit reimbursement for prior months except in exceptional circumstances. See 53 Comp. Gen. 364 (1973).

The Department of Agriculture (DOA) has requested our advice regarding its proposal to settle a claim by the Chicago (Illinois) Association for Retarded Children for retroactive reimbursement for expenses incurred in conducting a Special Food Services Program for day care centers over the period from July 1, 1974 through February 1975.

The Chicago Association for Retarded Children has been a participant for 5 years in a Special Food Service Program authorized under Section 13 of the National School Lunch Act, as amended, 42 U.S.C. § 1761 (1970). The Illinois Department of Education administers the program within the State of Illinois. The regulations governing the program, published in part 225, Title 7, Code of Federal Regulations (C.F.R.), require that organizations apply annually for participation in the program (7 C.F.R. § 225.7(b)). Payments may be made to service organizations operating under an agreement with the State agency or the DOA, as applicable, only after execution of the program agreement and may include reimbursement for meals served in the calendar month preceding the calendar month in which the agreement is executed. 7 C.F.R. § 225.11 (1975). The claimant's completed application for fiscal year 1975 was not submitted until April 1975 and not approved by the State agency until May 1975. As a result of the late completion of the application, the Association was advised that its claims for reimbursement would be paid starting with the claim for March 1975. The Association now seeks payment of its claims retroactive to July 1, 1974. DOA recommends approval.

It appears from the record that the State of Illinois established a two-tiered administrative structure for the control of the program

with initial application processing functions conducted by a local Educational Service Region (ESR) and final processing and approval performed by the Illinois Office of Education. The claimant states that it first received the application forms on about September 9, 1974, and that near the end of the month a staff member was sent to review procedures for completion of the forms. As a result of unexplained delays, the initial application was not completed until December 6, 1974. By letter dated January 8, 1975, the Association was advised that the State agency had not received its application. On about January 29, 1975, a representative of the Cook County ESR requested a meeting with the Association because the initial application had been filed incorrectly. Apparently as the result of a misunderstanding resulting from this meeting, the Association believed that it was required to accumulate financial data from all of its clients in order to ascertain whether they were in a poverty status and an effort was initiated to obtain this information through questionnaire mailings. In early April the Association determined that data could not be obtained from all of its clients and submitted the partial data then in its possession. The Illinois Office of Education received the application on April 25 and approved it on May 29, 1975. The record also shows that during this period the Association submitted monthly vouchers for reimbursement which were accepted by the State agency, apparently without question.

The terms and conditions prescribed by the cited regulations are statutory regulations, and, as such, cannot ordinarily be waived in particular instances. 53 Comp. Gen. 364 (1973); 46 id. 6 (1966). There have been a few occasions, however, in which we agreed to permit a settlement not strictly authorized by the program regulations based on an unusual set of circumstances in which the administrative agency itself was partially responsible either for the failure to comply with the regulations or with the fact that expenses were incurred in violation of the regulations. For example, in B-176994 of February 19, 1974, we stated that we would not object to reimbursement for meals actually served to needy children where actions by the administering agency (the Regional Office of the Department's Food and Nutrition Service) may have created the impression on a naive and inexperienced applicant that he was authorized to incur expenses, although no formal program agreement was ever executed because the applicant was later found to be unqualified. In 46 Comp. Gen. 6 (1966), we authorized a payment under the Special Milk Program for Children, notwithstanding claimant's failure to obtain prior approval of its contract with a food service management company as required by the appropriate statutory regulations, on the ground that if the claimant had been properly instructed by the State agency, the contract and claimant's participation in the

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program would have been regularized from the start. See also B-150657, March 8, 1963. In contrast, retroactive reimbursement was denied to a Boy Scout Council whose application to participate in the Special Milk Program was submitted five months after the camp had opened where the delay was attributable solely to the applicant's own tardiness. B-168529, January 5, 1970.

In the instant case, the applicant was an experienced participant in the Special Food Services Program and was, or should have been, knowledgeable regarding the regulatory requirements for participation and reimbursement. There is no evidence that either the BSR or the State Office of Education were responsible for the Association's delay in filing or the fact that when it finally filed, the application had been filled out incorrectly. Moreover, even the applicant admits that the additional delay during which applicant sought to acquire certain financial data before filing a corrected application, was attributable to a misunderstanding on the part of applicant's staff of a clear instruction by an BSR representative that a corrected application should be filed immediately. We think it is clear from the wording of 7 C.F.R. § 225.7(b) that an application for participation in the program must be submitted annually, and it is equally clear from the wording of 7 C.F.R. 225.11 (1975) that reimbursement payments may only extend back to the calendar month immediately prior to the month in which an agreement is executed with the state agency.

Under these circumstances, and since the regulations governing the Special Food Services Program were issued pursuant to statute and have the force and effect of law, we see no basis on which payment may be made to the Association for any period prior to March 1975.

**R. F. MILLER**

Deputy      Comptroller General  
                 of the United States